IN THE HIGH COURT OF JUDICATURE AT BOMBAY

O. O. C. J.

WRIT PETITION NO.1419 OF 2007

Karishma Ramesh Pandey
Mumbai, Indian inhabitant having
her address at Pandey Compound,
4th Carter Road, Borivali (East),
Mumbai 400 066. ..Petitioner.

Vs.

1. University of Mumbai, a statutory authority constituted under the provision of Mumbai University Act, 1994 having its address at University compound, Kalina, Mumbai.

2. Parle Tilak Vidyalaya, an association having its address at Dixit Road, Vile Parle (East), Mumbai 400 067.

3. The Principal,
M. L. Dhanukar College of Commerce having its address at Dixit Road, Vile Parle (East), Mumbai 400 067. ..Respondents.

….

Mr. D.H. Mehta i/b M/s. D.M. Legal Associates for the Petitioner.
Mr. Anirudha Joshi i/b Mr. T.S. Patwardhan for Respondent Nos.2 and 3.

….

CORAM : **SWATANTER KUMAR, C.J. &**
DR. D.Y. CHANDRACHUD, J.

Judgment reserved on 3rd September, 2007.
Judgment pronounced on 27th September, 2007.

JUDGMENT (Per Dr. D.Y. Chandrachud, J.)

1. The Petitioner is a student of the Second Year of the B.Com. degree course at the Third Respondent - M. L. Dhanukar College of Commerce which is managed and conducted by the Second Respondent. The issue before the Court in these proceedings relates to the validity of a decision taken by the authorities in the college to declare the performance of the Petitioner for the second term examination held in March 2007 as null and void. Consequent thereupon the Petitioner has been permitted to appear for the Second Year B.Com. examination to be held in October, 2007 or thereafter.

2. On 5th March, 2007 the Petitioner appeared for the examination in the subject of Economics – II. A Junior Supervisor found that the Petitioner was copying from written material which had been written on her desk. Upon being confronted by the Junior Supervisor the Petitioner, it is alleged sought to strike out some of the answers written by her in the answer book in such a manner that deciphering what she had written would become almost impossible. According to the authorities, this attempt at destroying the evidence of having copied at the examination was

not entirely successful and that some of the points written in the answer book can still be compared with what was jotted down by the Petitioner on the desk. The Junior Supervisor asked the Petitioner to change her desk and permitted her to complete the examination. Thereupon the incident was reported to the members of the examination committee. The desk on which the material was written was also sealed and kept in the office of the Principal of the college. The Petitioner was called upon to give a statement on the same day and in the course thereof the Petitioner stated that while recollecting her answers from memory, she had written something on the bench after receiving the answer book, but before the distribution of the question paper.

3. A notice was issued to the Petitioner on 5th March, 2007 of the unfair means enquiry committee which was to convene on 21st March, 2007 in connection with the use of unfair means by the Petitioner in the subject of Economics – II. The Petitioner furnished a statement before the committee in the following terms :

> "I was not copying. While recollecting my answer by mistake I wrote some points on the bench. I accept my mistake and I extremely sorry. Please forgive me for my first and last mistake. I received 30 out of 50 marks in my last examination and I had appeared very honestly

please forgive me and take into account my last performance."

4. Based on the provisions contained in Ordinance 5050 framed by the University of Mumbai, the performance of the Petitioner for the Second Year B.Com. examination for the second term was declared to be null and void. The Petitioner has, however, been permitted to appear in the month of October 2007. The Petitioner initially applied on 27th May, 2007 for a leaving certificate and on 29th May, 2007 for a no objection certificate enabling her to obtain admission in some other institution. These certificates were granted by the college. In the affidavit in reply it has been stated that while doing so the college did not refer to the findings of the unfair means enquiry committee with a view not to jeopardize the academic career of the student.

5. The decision has been challenged on the ground that (i) the Petitioner had not indulged in any unfair means or practice; that she needed only five marks to pass Economics – II paper as she had already secured 30 marks and the action against her has proceeded on the basis only of suspicion; (ii) The action of the

college in declaring the entire performance of the Petitioner as null and void, is arbitrary; (iii) The enquiry was merely an empty formality; the explanation offered by the Petitioner was not considered and the Petitioner was coerced into furnishing an apology; (iv) The decision was in violation of the principles of natural justice.

6. An affidavit in reply has been filed in these proceedings by the Third Respondent in which the circumstances of the case including the basis on which action was taken against the Petitioner have been duly explained. In the affidavit in reply the Third Respondent has emphasized that from the material on the record, the following circumstances stand admitted viz. :

1) That something was written on the bench by the Petitioner;

2) The material related to the subject of the examination;

3) Upon being confronted by the Junior Supervisor, the Petitioner sought to strike out some of the answers written in the answer book with an intent to destroy the evidence;

4) Writing on a desk or bench is prohibited which was duly intimated by way of an announcement to the students before

commencement of the examination and in the instructions printed on the answer books

7. In this case, it is abundantly clear that the enquiry into the allegations of unfair means was conducted in a manner consistent with the principles of natural justice. A notice was issued to the Petitioner on 5th March, 2007 informing her of the enquiry which was convened to be held on 21st March, 2007 in relation to the use of unfair means by the Petitioner at the examination held in the subject of Economics – II on 5th March, 2007. The Petitioner was allowed to submit her statement of explanation and it is necessary to note that the contention of the Petitioner was that while recollecting her answers, she had by mistake written some points on the bench. The statement by the Petitioner contains an acceptance of the mistake committed by her and the Petitioner apologized for her conduct. The college authorities acted in the present case on the basis of the complaint submitted by the Junior Supervisor who had apprehended the Petitioner while she was copying from the material which was written on her desk. The fact that there was such material written on the desk and that it was in the handwriting of the Petitioner has

not been disputed; nor for that matter is there any grievance that would suggest that the Junior Supervisor was biased against the Petitioner or had a motive to falsely implicate her. No such submission is set forth in the course of the arguments before the Court. In a matter relating to the use of unfair means at an examination, the authority which conducts the enquiry is required to do so in accordance with the principles of natural justice. The strict rules of evidence which govern a criminal trial have no application and the role of the reviewing Court is confined to determine as to whether the findings are based on some material on the record. In the present case, there is material to sustain the finding that has been arrived at against the Petitioner. Ultimately, it is for the fact finding authority to consider as to whether the explanation furnished by the student was worthy of acceptance. This Court would not substitute its own conclusions for those of the fact finding authority, absent a case of arbitrariness or perversity. The college had in fact by its notice dated 1st March, 2007 drawn the attention of all students to the punishments which are prescribed for resorting to unfair means at the examination. Ordinance 5050 makes provisions for dealing with unfair means adopted during the course of an examination. Under Ordinance

5050(1)(d) the college has to institute an enquiry in order to punish a student for unfair means used by a student in any examination. Unfair means are defined by Ordinance 5050(3)(b) to inter alia include possessing unfair means material or copying there from or transcribing any unauthorized material or use thereof. Ordinance 5050(3)(d) defines 'unfair means material' as follows :

> ""Unfair means material" means and includes any material whatsoever, related to the subject of the examination, printed, typed, handwritten or otherwise on the person or on clothes, or body of the student (examinee) or on wood or other material, in any manner or in the form of chart, diagram, map or drawing or electronic aid etc. which is not allowed in the examination hall."

8. The expression 'student found in possession' is defined in clause (f) of Ordinance 5050(3) as follows :

> ""Student found in possession" means a student, reported in writing, as having been found in possession of unfair means material by Jr. Supervisor, Sr. Supervisor, member of the vigilance Committee or Examination Squad or any other person authorised for this purpose, in this behalf, even if the unfair means material is not produced as evidence because of it being reported as swallowed or destroyed or snatched away or otherwise taken away or spoiled by the student or by any other person acting on his behalf to such an extent that it has become illegible. Provided report to that effect is submitted by the Sr. Supervisor or Chief Conductor or any other authorised person to the Controller of Examinations or Principal or Head of the Institution concerned or any officer authorised in this behalf."

9. The ordinance makes provisions for the procedure to be followed at an enquiry into unfair means. Clause 11 prescribes the punishments which may be imposed for the use of unfair means and the prescribed punishments include the annulment of performance of the student in full or in part of the examination for which she or he has appeared. Clause 11 further provides that as far as possible the quantum of punishment shall be as prescribed in Appendix A. The punishment which should be invariably followed for possession of copying material has been set out in Appendix A as the annulment for the performance of the student at the examination conducted by the university / college / institution in full.

10. We do not find any merit in the submission, that the finding of misconduct was based on mere suspicion or that the action has been pursued arbitrarily. There is absolutely no material to support the submission that the Petitioner was coerced into giving an apology. Similarly there is absolutely no merit in the contention that there was a breach of the principles of natural justice. Once the finding that the Petitioner was guilty of use of unfair means is sustainable, it would not be appropriate or proper for this Court to interfere with the punishment which has been awarded by the college authorities, particularly since the punishment awarded in this case is in accordance with the provisions of Clause 11 of Ordinance 5050.

11. In these circumstances, we do not find any merit in the Petition. The Petition shall accordingly stand dismissed.

CHIEF JUSTICE.

DR. D.Y. CHANDRACHUD, J.